

REMARKS

A Petition for a Three-Month Extension of Time hereby extending the time for responding to the Office Action from September 5, 2007 to and including December 5, 2007 is submitted herewith.

The present Amendment is in response to the Office Action mailed June 5, 2007. Claims 1-13 and 15 were rejected in the Action. Claims 1 and 13 have been amended herein. No claims have been added. Therefore, claims 1-13 and 15 remain pending in the present application. Support for all claim amendments can be found in Applicants' originally filed specification in at least paragraphs [0143]-[0144]. As such, no new matter has been added. Applicants set forth remarks relating to the Official Action below.

In the Action, the Examiner first objected to the specification as failing to provide proper antecedent basis for the limitation of the post being "permanently coupled with the manipulation tool." Applicants have deleted this limitation from independent claims 1 and 13 rendering this objection moot. The further 35 U.S.C. 112, first paragraph rejections of claims 1-13 and 15 regarding this same claim limitation are therefore moot as well. Applicants note that the claim amendments made to claims 1 and 13 were made in order to further clarify the subject matter claimed, as well as to expedite prosecution of the present application. Applicants make no admission as to whether the rejected limitation is supported by the specification as originally filed and reserve the right to possibly pursue claims with the limitation in one or more continuation/divisional applications.

Further in the Action, the Examiner rejected claims 1-12 under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 6,190,414 to Young et al. ("Young"). The Examiner asserted

that *Young* discloses baseplates including a plurality of engagement holes (170, 172) in a perimetrical region that has a single post 140 positioned within the holes of the plates. However, on page 5 of the Action the Examiner indicated that the features upon which the Applicants rely, i.e. "the entire post being within the manipulation tool", are not taught by *Young*.

Applicants respectfully assert that amended independent claim 1 is unanticipated by *Young* because the cited reference neither discloses nor suggests a spinal orthopedic device and tool set including a manipulation tool having "a proximal end, a distal end, and a shaft located along a longitudinal axis of said manipulation tool between said proximal and distal ends, said shaft including a central channel coaxial with said longitudinal axis, said central channel housing a post."

Element 140 in *Young*, what the Examiner referred to as a "post," is a separate component than applier instrument or manipulation tool 102. Post 140 in *Young* is merely a telescopic jack screw that is part of a telescopic jack mechanism 138 removable from the manipulation tool after being deployed between engaging plates 158, 160. More to this point, *Young* discloses that telescopic jack mechanism 138 is releasably mounted to mounting clamp 124 which is mounted to the distal end of applier instrument 102. See col.4, ll.66-67; col.5, ll.1; and col.5, ll.26-27; Figs. 14-15 and 18-19. In contrast, the post of the present invention remains coupled to the manipulation tool after use thereof. Claim 1 clearly recites that shaft of the manipulation tool includes a central channel housing a post.

Further, the Examiner could not assert that element 120 in *Young* is the post either. There is no indication anywhere in the specification of *Young*, that element 120 has a

first position corresponding to the post being disposed entirely within the distal end of the manipulation tool and a second position wherein the post extends outwardly from the distal end of the manipulation tool. These claim recitations are clearly shown in Figs. 72-82 and are described in at least paragraphs [0143]-[0144] of the originally filed specification. As stated in these paragraphs, bent distal end 4100 of pin 4080 is prevented from entering central channel of shaft 4020 by engaging center flat surface 4200b when pin 4080 is in a first position. In an extended position, pin 4080 is spaced away from central flat surface 4200b. As shown in at least Fig. 73, post 4080 is disposed entirely within the distal end of the manipulation tool. As further described in paragraphs [0143]-[0144], in a second position the post extends outwardly from the distal end of the manipulation tool. Moreover, by the Examiner's own admission, *Young* does not disclose a post being "entirely within" a distal end of the manipulation tool in a first position. Claim 1 has been amended herein to include such a limitation.

For the foregoing reasons, amended claim 1 is unanticipated by *Young* and is otherwise allowable. Claims 2-12 are unanticipated, *inter alia*, by virtue of their dependence from claim 1, which is unanticipated for the reasons set forth above.

Further in the Action, the Examiner rejected claim 13 under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,192,327 to Brantigan ("Brantigan") in view of U.S. Pat. No. 6,709,439 to Rogers et al. ("Rogers"). The Examiner asserted that *Brantigan* discloses an intervertebral spacer device 17 with plates 11 having engagement holes 13 and a manipulation tool with posts 73, 75 respectively that are inserted into the engagement holes via threads. The Examiner further asserted

that *Brantigan* fails to disclose the tool has a spring to bias the post into the engagement hole and that *Rogers* teaches a spring loaded manipulation tool wherein the spring is used to maintain or keep the tip in the engagement hole.

Applicants respectfully assert that amended independent claim 13 is not obvious in view of *Brantigan* and *Rogers* because the cited references do not disclose, teach, or suggest each claim limitation recited in the claim as required to establish a *prima facie* case of obviousness. See M.P.E.P. 2142. Applicants submit that one skilled in the art would and could not combine *Brantigan* with *Rogers* to arrive at present invention. Amended independent claim 13 includes the recitations that the post has a first position corresponding to the post being disposed entirely within the distal end of the manipulation tool and a second position wherein the post extends outwardly from the distal end of the manipulation tool. As stated above, these claim recitations are clearly shown in Figs. 72-82 and are described in at least paragraphs [0143]-[0144] of the originally filed specification.

The primary reference *Brantigan* does not disclose or suggest movement of a post from a first position to a second position with respect to a distal end of either tool 73, 75. Further, *Rogers* teaches away from a post being disposed entirely within the distal end of the manipulation tool. In fact, *Rogers* discloses a *distally protruding tip* 106 of pin 62 that is clearly shown and described at all times distally protruding or extending outwardly from the distal end of tool 10. See col.8, ll.12-13. For the foregoing reasons, amended claim 13 is unobvious over *Brantigan* in view of *Rogers*.

Finally, the Examiner rejected claim 15 under 35 U.S.C. 103(a) as being unpatentable over *Brantigan* in view of *Rogers* in further view of U.S. Pat. Pub. No. 2003/0028249 to

Baccelli et al. ("Baccelli"). Applicants respectfully submit claim 15 is unobvious over Brantigan in view of Rogers in further view of Baccelli for at least the same reasons that claim 13 is.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: December 5, 2007

Respectfully submitted,

By 
William A. Di Bianca
Registration No.: 58,653
LERNER, DAVID, LITTBENBERG,
KRMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicants